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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0235**

State of Minnesota,
Respondent,

vs.

Ahmed Abdirahim Abdi,
Appellant.

**Filed February 20, 2018
Affirmed
Kirk, Judge**

Hennepin County District Court
File No. 27-CR-15-20688

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Melissa Sheridan, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Halbrooks, Judge; and Schellhas,
Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant challenges his second-degree murder conviction, arguing that he is entitled
to a new trial because (1) the district court prejudicially erred when the trial judge

reconsidered the pretrial judge's *Spreigl* ruling, (2) the district court abused its discretion by admitting a statement appellant made about getting away with murder, and (3) the cumulative effect of these errors denied him a fair trial. We affirm.

FACTS

On July 29, 2015, appellant Ahmed Abdirahim Abdi was charged with second-degree murder under Minn. Stat. § 609.19, subd. 1(1) (2014). It was alleged that appellant killed his girlfriend, A.A., in his bedroom by shooting her in the head on April 11, 2015. On April 4, 2016, the state filed a *Spreigl* notice indicating that it intended to introduce at trial evidence of two prior bad acts attributed to appellant: (1) that appellant was charged with participating in an April 10, 2015 first-degree aggravated robbery, and (2) that appellant brandished a firearm in a public place on or about April 8, 2015.

At an April 12, 2016 motion hearing, a pretrial judge denied the state's *Spreigl* motion. Regarding the second incident, the pretrial judge found that there was not clear and convincing evidence that appellant brandished a firearm and that the probative value of the incident did not outweigh the potential for unfair prejudice to appellant. On June 7, the same pretrial judge filed an inconsistent written *Spreigl* order admitting the brandishing-a-firearm incident. In the written order, the pretrial judge found that there was clear and convincing evidence of appellant's participation in the incident and that the probative value of the evidence outweighed its potential for unfair prejudice to appellant. On June 20, after the discrepancy between his *Spreigl* rulings was noted, the pretrial judge stated on the record that his written order was issued in error and that neither *Spreigl* incident would be admitted at trial, as he originally ruled on the record.

On June 30, appellant's case was reassigned to a different judge. On July 7, the state filed a motion to reconsider the pretrial judge's *Spreigl* ruling. On July 12, when the parties appeared for trial, the trial judge agreed to review the state's motion to reconsider. On July 13, the trial judge granted the state's motion to reconsider because it was unclear which one of the pretrial judge's *Spreigl* rulings was final. On July 14, the trial judge agreed with the pretrial judge's written *Spreigl* order and ruled that the brandishing-a-firearm incident was admissible. The case proceeded to a trial by jury. The jury found appellant guilty of second-degree murder, and the district court sentenced him to 306 months in prison.

This appeal follows.

DECISION

I. The trial judge did not err in reconsidering the pretrial judge's *Spreigl* ruling.

The district court has the inherent authority to reconsider pretrial or omnibus rulings. *State v. Papadakis*, 643 N.W.2d 349, 356-57 (Minn. App. 2002) (citing *State v. Montjoy*, 366 N.W.2d 103, 107-08 (Minn. 1985)). In fact, "a motion for reconsideration may be the most efficient and preferable course of action, and it can spare parties the time, trouble, and expense of an appeal." *Id.* at 357 (citing *Montjoy*, 366 N.W.2d at 107-08).

"The state may request that the [district] court reconsider the [omnibus] order upon proper application of the parties made at an appropriate time during the course of the trial." *State v. Lyons*, 423 N.W.2d 95, 98 (Minn. App. 1988) (quotation omitted), *review denied* (Minn. July 6, 1988). But, an omnibus order may only be reconsidered by another judge where there are "extraordinary circumstances" present to justify reconsideration. *Id.*; *see also* Minn. R. Crim. P. 11.07 cmt. ("The intent of the Omnibus Hearing rule is that all issues that

can be determined before trial must be heard at the Omnibus Hearing and decided before trial. Consequently, when the Omnibus Hearing is held before a judge other than the trial judge, the trial judge, except in extraordinary circumstances will adhere to the findings and determinations of the Omnibus Hearing judge.”). “Extraordinary circumstances” have not been defined in our caselaw. *Lyons*, 423 N.W.2d at 99.

Appellant argues that the trial judge erred in reconsidering the pretrial judge’s *Spreigl* ruling because there were no extraordinary circumstances to justify reconsideration. Appellant asserts that the error was prejudicial and warrants a new trial. The state argues that this case did involve extraordinary circumstances to justify reconsideration because the pretrial judge’s contradictory *Spreigl* rulings were “confusing and unusual.” The state asserts that, because the pretrial judge gave no explanation for his decision to disregard his written order, the trial judge could not determine the legal basis of that decision with any certainty. The state also argues that this case is similar to *State v. Hamling*, where a trial judge wanted to follow the pretrial judge’s omnibus ruling but could not determine “with certainty what that ruling was.” 314 N.W.2d 224, 225 (Minn. 1982). Because the evidence ultimately admitted by the trial judge in *Hamling* was reliable, the supreme court concluded that the trial judge did not prejudicially err in admitting it. *Id.*

Here, we need not consider whether there were extraordinary circumstances to justify reconsideration of the pretrial judge’s *Spreigl* ruling because any procedural error made did not unfairly prejudice appellant. *Id.* (holding that the defendant was not prejudiced by a trial judge’s reconsideration of a prior judge’s omnibus order where the identification evidence challenged was reliable and therefore admissible at trial); *State v. Coe*, 298 N.W.2d 770, 772

(Minn. 1980) (holding that the defendant was not prejudiced by a trial judge's reconsideration of a prior judge's omnibus order where the other-crimes evidence challenged was admissible at trial).

Other-crimes evidence under Minn. R. Evid. 404(b), also known as *Spreigl* evidence under *State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965), is admissible when the following five conditions are met:

- (1) the state must give notice of its intent to admit the evidence;
- (2) the state must clearly indicate what the evidence will be offered to prove; (3) there must be clear and convincing evidence that the defendant participated in the prior act; (4) the evidence must be relevant and material to the state's case; and (5) the probative value of the evidence must not be outweighed by its potential prejudice to the defendant.

State v. Ness, 707 N.W.2d 676, 686 (Minn. 2006).

Here, appellant does not dispute that the state gave notice along with an explanation of what the brandishing-a-firearm incident would be offered to prove, that there was clear and convincing evidence of his participation in the incident, or that the incident was relevant and material to the state's case. Rather, appellant asserts that the probative value of the evidence was not outweighed by the potential for unfair prejudice. In the final *Spreigl* ruling, the trial judge admitted the brandishing-a-firearm incident after finding that the probative value of the evidence was not outweighed by the risk for potential prejudice to appellant.

When evaluating a district court's admission of *Spreigl* evidence, this court applies an abuse of discretion standard. *State v. Scruggs*, 421 N.W.2d 707, 715 (Minn. 1988). "To warrant a new trial, the erroneous admission of *Spreigl* evidence must create a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v.*

Fardan, 773 N.W.2d 303, 320 (Minn. 2009) (quotation omitted). To prevail, an appellant must show “error and the prejudice resulting from the error.” *State v. Loebach*, 310 N.W.2d 58, 64 (Minn. 1981).

Appellant argues that admission of the *Spreigl* evidence was unfairly prejudicial because without it the jury would not have heard that he had access to a firearm a few days before the murder. Appellant argues that he is entitled to a new trial, because without the *Spreigl* evidence it is possible that he would have been acquitted. The state argues that the district court did not abuse its discretion in reconsidering the pretrial judge’s ruling and in admitting the *Spreigl* evidence because appellant was not unfairly prejudiced by its admission. The state argues that the brandishing-a-firearm incident was highly probative and necessary to the state’s case because the murder weapon was never recovered. *See Angus v. State*, 695 N.W.2d 109, 120 (Minn. 2005) (“‘Need’ for other-crime evidence is not necessarily the absence of sufficient other evidence to convict [E]vidence of other offenses may be needed because, as a practical matter, it is not clear that the jury will believe the state’s other evidence bearing on the disputed issue.” (quoting *State v. Bolte*, 530 N.W.2d 191, 197 n.2 (Minn. 1995))). The state also notes that the district court provided a cautionary instruction before the *Spreigl* evidence was presented. *See State v. Kennedy*, 585 N.W.2d 385, 392 (Minn. 1998) (noting that providing cautionary instructions “lessened the probability of undue weight being given by the jury to the [*Spreigl*] evidence”).

“In assessing the probative value and need for the evidence, the district court must identify the precise disputed fact to which the *Spreigl* evidence would be relevant.” *Ness*, 707 N.W.2d at 686 (quotation omitted). “This entails isolating the consequential fact for which

the evidence is offered, and then determining the relationship of the offered evidence to that fact and the relationship of the consequential fact to the disputed issues in the case.” *Id.* Here, the trial judge found that the *Spreigl* evidence was relevant to prove opportunity and that appellant had possession of a firearm. In order to prove that appellant caused A.A.’s death, the state was required to prove that appellant shot her with a firearm intending to cause death. In this case, the *Spreigl* evidence was highly probative because the state had no other evidence that appellant had possession of a firearm.

The trial judge also concluded that the probative value of the *Spreigl* evidence outweighed its potential for unfair prejudice, especially in light of the cautionary instruction. To determine prejudice, this court considers the entire record, including such factors as the manner in which the evidence was presented, whether the evidence was a significant part of the trial, whether the district court gave a cautionary instruction, whether the evidence was used in closing argument, and the strength of the other evidence against appellant. *State v. Clark*, 738 N.W.2d 316, 347-48 (Minn. 2007).

Here, the record shows that *Spreigl* evidence was not presented in such a way as to create prejudice, and it was not a significant part of the five-day trial. Although the evidence was presented through the state’s final witness, his testimony was brief, he was subject to cross-examination, and a witness for the defense later disputed his perception of the *Spreigl* incident. The district court also gave an appropriate cautionary instruction when the evidence was admitted, and the state only mentioned the incident briefly during its closing argument. The state’s other evidence against appellant was also strong and identified him as the only person fleeing the scene of A.A.’s murder, and established that he fled the state and altered

his appearance after A.A. was shot. On this record, the *Spreigl* evidence was not unfairly prejudicial.

Because the brandishing-a-firearm incident was properly admitted as *Spreigl* evidence, appellant was not unfairly prejudiced by the trial judge's reconsideration of the pretrial judge's *Spreigl* ruling, and appellant is not entitled to a new trial. Because appellant was not unfairly prejudiced, we decline to address whether extraordinary circumstances were present to justify reconsideration on this record. However, we note that the materiality of *Spreigl* evidence to the state's case will not always be apparent at the time of the pretrial. So reconsideration of a pretrial *Spreigl* ruling may become necessary during the pendency of a criminal case regardless of whether the case has undergone judicial reassignment.

II. The district court did not abuse its discretion in admitting a prior statement that appellant made about getting away with a murder.

“Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced.” *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citations omitted). “If no constitutional right was implicated, we will reverse only if the district court’s error substantially influenced the jury’s decision.” *State v. Vang*, 774 N.W.2d 566, 576 (Minn. 2009) (quotation omitted). In deciding what effect erroneously admitted evidence had on the verdict, the reviewing court considers “the manner in which the evidence was presented, whether it was highly persuasive, whether it was used in closing argument, and whether the defense effectively countered it.” *Townsend v. State*, 646 N.W.2d 218, 223 (Minn. 2002).

Under Minn. R. Evid. 401, evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Although generally admissible, relevant evidence may be excluded under Minn. R. Evid. 403 if “its probative value is substantially outweighed by the danger of unfair prejudice.” At trial, the state presented evidence that, sometime before A.A.’s death, appellant told one of his high school teachers that he could kill someone with a vehicle and get away with it. Defense counsel objected, and the district court found that the statement’s probative value outweighed its prejudicial impact and the statement was admissible. *See* Minn. R. Evid. 403. The state also argued that the statement was admissible as a non-hearsay admission of a party opponent. *See* Minn. R. Evid. 801(d)(2).

Appellant argues that his prior statement was admitted in error because it was not relevant to a shooting homicide and was unfairly prejudicial. Appellant asserts that the statement substantially influenced the jury’s verdict and that he is entitled to a new trial. Appellant argues that the state highlighted the evidence in closing by arguing that appellant’s motive may have been to try to get away with murder. Appellant asserts that this evidence of a possible motive was compelling and highly persuasive because the state had no other evidence related to motive and because, although the defense attempted to downplay the statement, there was no evidence to prove appellant did not make the statement.

Here, regardless of whether appellant’s prior statement was relevant under Minn. R. Evid. 401, presentation of the statement to the jury was not prejudicial. In addition to this statement, the jury also heard testimony from a jailhouse informant that appellant boasted in

jail that he had killed someone and was going to get away with it. Additionally, there was no evidence presented that anyone else was in appellant's bedroom with A.A. at the time of the shooting. The state referenced appellant's statement once in closing to suggest a possible motive, but a review of the record reveals that the defense was able to effectively minimize its impact by characterizing the statement as an irrelevant distraction.

On this record, regardless of whether admission of appellant's prior statement was an abuse of discretion, we cannot conclude that admission of the statement prejudiced appellant by substantially impacting the jury's verdict.

III. Appellant was not denied a fair trial.

A criminal defendant has the constitutional right to a fair trial. *State v. Mayhorn*, 720 N.W.2d 776, 791 (Minn. 2006). A defendant is entitled to a new trial if the cumulative effect of the errors at trial deprived him of a fair trial. *State v. Keeton*, 589 N.W.2d 85, 91 (Minn. 1998). Appellant argues that the cumulative effect of the erroneous admission of the *Spreigl* evidence and the vehicular-homicide statement deprived him of a fair trial. Because we conclude that the *Spreigl* evidence was properly admitted, and because admission of appellant's statement about getting away with murder was not unfairly prejudicial, there are no grounds on this record to order a new trial.

Affirmed.